IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5560 OF 2003

Mr.N.V.Bandiwadekar for the Petitioner.

Mr.Dilip Bodake for Respondents Nos. 1 to 4, 6 & 7.

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	CORAM: D.K.DESHMUKH, J.
	DATED: 27TH APRIL,2005

P.C.:

Rule. Returnable forthwith. Heard finally by consent of the parties.

1. By the impugned order the Petitioner has been held to be entitled to the maintenance, but the Court has granted maintenance from the date of the order i.e. 13-1-2003. The case of the Petitioner is that in the order the trial court has found that the Petitioner is entitled to maintenance as per her claim in the

application. In the submission of the learned Counsel it is therefore obvious that the trial court has found that on the date on which the application was made by the Petitioner, the Petitioner was entitled to maintenance. Therefore, without assigning reason, according to the learned Counsel, the trial court was not justified in directing payment of maintenance from the date of the order and not from the date of the application.

2. The learned Counsel appearing for the Respondent, on the other hand, submits that whether to grant maintenance from the date of the application or from the date of the order is in the discretion of the court and therefore, if the court in its discretion has granted maintenance from the date of the order and not from the date of the application, this court cannot interfere with the order.

3. Now, if in the light of these rival submissions the record of the

case is perused, it becomes clear that the trial court has recorded a finding that the Petitioner has made out a case which she has pleaded in her application that the property is joint, she is not being given any income from that property and that she is not in a position to maintain herself. Therefore, normally if the Petitioner had made out her case pleaded in the application, she would have been entitled to maintenance from the date of her application on the basis of the finding recorded in the order itself, unless the court for special reason to be recorded by the court finds that though the Petitioner is entitled to maintenance, she is not entitled to maintenance from the date of the application, but from any subsequent date. It is true that the date from which maintenance is to be granted is in the discretion of the court, but that is the discretion vested in the court of law and therefore has to be exercised by the court for disclosed reason. The impugned order shows that though the maintenance has been

granted from the date of the order, no reasons have been disclosed.

4. Taking overall view of the matter, therefore, in my opinion, the trial court was not justified in granting maintenance from the date of its order and not from the the date of the application. The order of the trial court dated 13-1-2003, therefore, deserves to be modified to the following extent.

"It is directed that the Respondent shall pay maintenance at the rate fixed by the trial court to the Petitioner with effect from 7-11-1996. It is further directed that the amount shall be paid within a period of six weeks from today."

Rule made absolute accordingly. The Respondent shall pay costs of this petition to the Petitioner, as incurred by the Petitioner.

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